

November 12, 2009

Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-1291

RECEIVED

DEC - 9 2009

JOEL SCHNEIDER
U.S. Magistrate Judge

In Regard to the Matter of:

Bayside State Prison
Litigation

OPINION/REPORT
OF THE
SPECIAL MASTER

EDWIN RICHARDSON

-vs-

WILLIAM H. FAUVER, et al,
Defendants.

* * * *

THURSDAY, NOVEMBER 12, 2009

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

November 12, 2009

Page 2

1
2
3
4
5 Transcript of proceedings in the above
6 matter taken by Theresa O. Mastroianni, Certified
7 Court Reporter, license number 30X100085700, and
8 Notary Public of the State of New Jersey at the
9 United States District Court House, One Gerry Plaza,
10 Camden, New Jersey, 08102, commencing at 3:44 PM.
11
12
13
14
15
16
17
18

19 MASTROIANNI & FORMAROLI, INC.
20 Certified Court Reporting & Videoconferencing
21 251 South White Horse Pike
22 Audubon, New Jersey 08106
23 856-546-1100
24
25

November 12, 2009

Page 3

1

2 A P P E A R A N C E S:

3

4

LOUGHRY & LINDSAY, ESQUIRES
BY: JUSTIN T. LOUGHRY, ESQUIRE
330 MARKET STREET
CAMDEN, NEW JERSEY 08102
856-968-9201
ATTORNEYS FOR THE PLAINTIFFS

8

9

10

ROSELLI, GRIEGEL, LOZIER & LAZZARO, PC
BY: MARK ROSELLI, ESQUIRE

- and -

11

BY: JAMES LAZZARO, ESQUIRE

- and -

12

BY: STEVEN GRIEGEL, ESQUIRE
1337 STATE HIGHWAY 33
HAMILTON SQUARE, NEW JERSEY 08690
609-586-2257

13

14

ATTORNEYS FOR THE DEFENDANTS

15

16

17

18

19

20

21

22

23

24

25

November 12, 2009

Page 4

1 JUDGE BISSELL: I am now reopening
2 proceedings in the case of Edwin Richardson, docket
3 number 08-1291.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations of Mr.
12 Richardson.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 Mr. Richardson was housed in Trailer
18 Number Four and he was extracted to the gym for the
19 search of that trailer on August 1st, 1997.

20 Throughout his testimony there is a
21 description of several assaults that he alleges
22 occurred to him on that day. I'm not going to place
23 upon this record any lengthy quotations. In summary,
24 he alleges, one, that his face was slammed up against
25 his locker during the strip search before his

November 12, 2009

Page 5

1 extraction for the trip to the gym, two, that he was
2 hit and prodded on his way out of the unit, three,
3 that he had beatings by several officers present in
4 the West Sally Port and at Center on the way to the
5 gym, (two separate instances on that occasion), four,
6 that he was beaten in the back when he fell over in
7 the gym because he was complaining of back pain at
8 that location and, five, that he was beaten on the
9 back and on his bed when he was returned to the unit
10 and that beating was administered by Officer Adams.

11 Although there might be some inherent
12 credibility with regard to items one, two and four of
13 that litany, due to aggressive behavior by SOG to
14 control inmates and punish non-conforming behavior,
15 items three and five, namely the beatings at the West
16 Sally Port and at Center and the beatings in the unit
17 by Officer Adams are both inherently implausible and
18 effectively rebutted. As such, those untruths cast
19 substantial doubt on the truth of items one, two and
20 four as well and eventually produce a failure of
21 proof in toto.

22 Mr. Richardson has not satisfied his
23 burden of proof by a preponderance of the credible
24 evidence with regard to any of the alleged beatings
25 which he says were inflicted upon him. Among other

November 12, 2009

Page 6

1 things, there was contrary evidence to that which he
2 presented. Officer Adams testified and records
3 reveal that he was not assigned to Trailer Number
4 Four on any shift on August 1st of '97. Furthermore,
5 he never assaulted Mr. Richardson at any time and has
6 never been accused of inmate abuse at any time.

7 Furthermore, he testified (I find very
8 credibly) at page 133 of the transcript of
9 September 30th, that housing officers who had to live
10 with these inmates on a daily basis, not only during,
11 but after the lockdown, would have absolutely no
12 incentive to beat inmates and acquire a reputation
13 for the beating of inmates. Indeed, it was in their
14 interest not to do so because of the fact that,
15 unarmed, they were alone with large populations of
16 inmates on a daily and hourly basis.

17 The description of the extent of the
18 assaults that supposedly appeared at the West Sally
19 Port and at Center, frankly, is absurd. There is,
20 once again, no reason for one to make a determination
21 that such conduct would occur in such public
22 locations at the very outset of this lockdown with
23 supervisory and, indeed, administrative personnel in
24 all likelihood in a position to observe them. I find
25 that's a fabrication.

November 12, 2009

Page 7

1 As far as, once again, the question of
2 him having been beaten upon his return to the unit,
3 Officer DuBois testified that he was among the
4 Bayside officers on the search team who would have
5 remained in the dayroom upon the return of the
6 prisoners to the unit. He saw nothing which
7 indicated any assaults either before or after Mr.
8 Richardson's return.

9 The attitude of Mr. Richardson also has
10 an impact on his credibility here. For instance, at
11 locations in the transcript such as from page 97
12 through 99 and also from pages 74 through 75 he made
13 some stubborn assertions about the inaccuracy and
14 falsehood of records and reports that frankly are not
15 credible and indicate a belligerence or recalcitrance
16 here that colors and casts significant doubt upon the
17 accuracy and the truth of his testimony. There are
18 other instances of that type of testimony appearing
19 on pages 99 through 103. And I've already mentioned,
20 once again, the absolutely implausible description of
21 the events that supposedly took place at Center. It
22 really does, indeed, color the accuracy of his entire
23 testimony. Let me just read that excerpt at page
24 112. This is during his cross-examination. Lines
25 four through 20.

November 12, 2009

Page 8

1 "Question: I just want to draw your
2 attention back to the alleged incident in front of
3 the Center Unit. While this assault was allegedly
4 taking place in front of the Center Unit, is it your
5 testimony that no Bayside officers in the Center Unit
6 came out and put a stop to this alleged assault?

7 "Answer: I didn't see anybody out
8 there trying to stop anything.

9 "Question: And this assault in front
10 of Center took place in daylight hours with, what
11 you've testified to, with at least 20 to 25 other
12 officers present, correct?

13 "Answer: As far as I could tell, yes.

14 "Question: And the alleged assault at
15 the Sally Port, there were multiple officers involved
16 in that as well, correct?

17 "Answer: Yes."

18 Once again, this is entirely
19 implausible given all of the circumstances.

20 And so, based upon the inherent
21 incredibility of such incidents as those recounted at
22 the West Sally Port at Center, the refutation of
23 allegations by Officer Adams, indeed, the
24 establishment that he wasn't even at Trailer Number
25 Four on the day when the assault is attributed to

November 12, 2009

Page 9

1 him, and Mr. Richardson's stubborn assertions with
2 regard to the falsehood of documents and reports and
3 the like which themselves are without credibility,
4 his testimony as a whole basically is incredible
5 and/or certainly does not rise to the level of
6 establishing the proof of his charges by a
7 preponderance of the credible evidence.

8 Finally, although not every item of
9 evidence has been discussed in this opinion/report,
10 all evidence presented to the Special Master was
11 reviewed and considered.

12 For the reasons set forth above, I
13 recommend in this report that the district court
14 enter an order and judgment of no cause for action
15 with regard to Edwin Richardson.

November 12, 2009

Page 10

C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



Theresa O. Mastroianni, C.S.R.
Notary Public, State of New Jersey
My Commission Expires May 5, 2010
Certificate No. XI0857
Date: November 20, 2009

<p>A</p> <p>absolutely 6:11 7:20</p> <p>absurd 6:19</p> <p>abuse 6:6</p> <p>accuracy 7:17 7:22</p> <p>accurate 10:6</p> <p>accused 6:6</p> <p>acquire 6:12</p> <p>action 1:2 9:14 10:11,14</p> <p>Adams 5:10,17 6:2 8:23</p> <p>administered 5:10</p> <p>administrative 6:23</p> <p>aggressive 5:13</p> <p>Agreement 4:7</p> <p>al 1:9</p> <p>allegations 4:11 8:23</p> <p>alleged 5:24 8:2 8:6,14</p> <p>allegedly 8:3</p> <p>alleges 4:21,24</p> <p>and/or 9:5</p> <p>Answer 8:7,13 8:17</p> <p>anybody 8:7</p> <p>appeared 6:18</p> <p>appearing 7:18</p> <p>applicable 4:11</p> <p>applied 4:8</p> <p>assault 8:3,6,9 8:14,25</p> <p>assaulted 6:5</p> <p>assaults 4:21 6:18 7:7</p> <p>assertions 7:13 9:1</p> <p>assigned 6:3</p> <p>attention 8:2</p> <p>attitude 7:9</p>	<p>attorney 10:10 10:12</p> <p>ATTORNEYS 3:7,14</p> <p>attributed 8:25</p> <p>Audubon 2:22</p> <p>August 4:19 6:4</p> <p>B</p> <p>back 5:6,7,9 8:2</p> <p>based 4:9 8:20</p> <p>basically 9:4</p> <p>basis 6:10,16</p> <p>Bayside 1:5 7:4 8:5</p> <p>beat 6:12</p> <p>beaten 5:6,8 7:2</p> <p>beating 5:10 6:13</p> <p>beatings 5:3,15 5:16,24</p> <p>bed 5:9</p> <p>behavior 5:13 5:14</p> <p>belligerence 7:15</p> <p>BISSELL 1:21 4:1</p> <p>burden 5:23</p> <p>C</p> <p>C 3:2 10:1,1</p> <p>Camden 2:10 3:6</p> <p>case 4:2</p> <p>cast 5:18</p> <p>casts 7:16</p> <p>cause 9:14</p> <p>Center 5:4,16 6:19 7:21 8:3,4 8:5,10,22</p> <p>certainly 9:5</p> <p>Certificate 10:21</p> <p>Certified 2:6,20 10:4</p>	<p>certify 10:5,9</p> <p>charges 4:10 9:6</p> <p>circumstances 8:19</p> <p>Civil 1:2 4:14</p> <p>color 7:22</p> <p>colors 7:16</p> <p>commencing 2:10</p> <p>Commission 10:20</p> <p>complaining 5:7</p> <p>conduct 6:21</p> <p>considered 9:11</p> <p>constitute 4:14</p> <p>contrary 6:1</p> <p>control 5:14</p> <p>correct 8:12,16</p> <p>counsel 10:10,12</p> <p>court 1:1 2:7,9 2:20 9:13</p> <p>credibility 5:12 7:10 9:3</p> <p>credible 5:23 7:15 9:7</p> <p>credibly 6:8</p> <p>cross-examina... 7:24</p> <p>C.S.R 10:19</p> <p>D</p> <p>daily 6:10,16</p> <p>date 10:8,21</p> <p>day 4:22 8:25</p> <p>daylight 8:10</p> <p>dayroom 7:5</p> <p>decision 4:8</p> <p>Defendants 1:10 3:14</p> <p>description 4:21 6:17 7:20</p> <p>determination 6:20</p> <p>directives 4:5</p> <p>discussed 9:9</p> <p>district 1:1,2 2:9</p>	<p>9:13</p> <p>docket 4:2</p> <p>documents 9:2</p> <p>doubt 5:19 7:16</p> <p>draw 8:1</p> <p>DuBois 7:3</p> <p>due 5:13</p> <p>E</p> <p>E 3:2,2 10:1,1</p> <p>Edwin 1:7 4:2 9:15</p> <p>effectively 5:18</p> <p>either 7:7</p> <p>employee 10:10 10:12</p> <p>enter 9:14</p> <p>entire 7:22</p> <p>entirely 8:18</p> <p>ESQUIRE 3:5 3:10,11,12</p> <p>ESQUIRES 3:4</p> <p>establishing 9:6</p> <p>establishment 8:24</p> <p>et 1:9</p> <p>events 7:21</p> <p>eventually 5:20</p> <p>evidence 5:24 6:1 9:7,9,10</p> <p>excerpt 7:23</p> <p>Expires 10:20</p> <p>extent 4:11 6:17</p> <p>extracted 4:18</p> <p>extraction 5:1</p> <p>F</p> <p>F 10:1</p> <p>fabrication 6:25</p> <p>face 4:24</p> <p>fact 6:14</p> <p>facts 4:8</p> <p>failure 5:20</p> <p>falsehood 7:14 9:2</p> <p>far 7:1 8:13</p>	<p>FAUVER 1:9</p> <p>fell 5:6</p> <p>finalized 4:13</p> <p>Finally 9:8</p> <p>financially 10:13</p> <p>find 6:7,24</p> <p>five 5:8,15</p> <p>foregoing 10:5</p> <p>FORMAROLI 2:19</p> <p>forth 4:9 9:12 10:8</p> <p>four 4:18 5:5,12 5:20 6:4 7:25 8:25</p> <p>frankly 6:19 7:14</p> <p>front 8:2,4,9</p> <p>FURTHER 10:9</p> <p>Furthermore 6:4,7</p> <p>G</p> <p>Gerry 2:9</p> <p>given 8:19</p> <p>going 4:22</p> <p>GRIEGEL 3:9 3:12</p> <p>guiding 4:7</p> <p>gym 4:18 5:1,5,7</p> <p>H</p> <p>H 1:9</p> <p>HAMILTON 3:13</p> <p>hereinbefore 10:8</p> <p>HIGHWAY 3:12</p> <p>hit 5:2</p> <p>HONORABLE 1:21</p> <p>Horse 2:21</p> <p>hourly 6:16</p> <p>hours 8:10</p>
---	---	--	--	---

November 12, 2009

12

House 2:9 housed 4:17 housing 6:9	L large 6:15 law 4:7 LAZZARO 3:9 3:11 lengthy 4:23 level 9:5 license 2:7 likelihood 6:24 LINDSAY 3:4 Lines 7:24 litany 5:13 Litigation 1:6 live 6:9 Local 4:13 location 5:8 locations 6:22 7:11 lockdown 6:11 6:22 locker 4:25 LOUGHRY 3:4 3:5 LOZIER 3:9	5:14 Notary 2:8 10:3 10:20 November 1:15 10:21 number 2:7 4:3 4:18 6:3 8:24	position 6:24 preponderance 5:23 9:7 present 5:3 8:12 presented 6:2 9:10 principles 4:7 Prison 1:5 prisoners 7:6 proceedings 2:5 4:2 prodged 5:2 produce 5:20 proof 5:21,23 9:6 public 2:8 6:21 10:3,20 punish 5:14 pursuant 4:5 put 8:6	remained 7:5 reopening 4:1 report 4:15 9:13 Reporter 2:7 10:4 Reporting 2:20 reports 7:14 9:2 reputation 6:12 required 4:15 return 7:2,5,8 returned 5:9 reveal 6:3 review 4:13 reviewed 9:11 Richardson 1:7 4:2,12,17 5:22 6:5 7:9 9:15 Richardson's 7:8 9:1 rise 9:5 ROSELLI 3:9 3:10 Rule 4:14
I impact 7:10 implausible 5:17 7:20 8:19 inaccuracy 7:13 incentive 6:12 incident 8:2 incidents 8:21 incredibility 8:21 incredible 9:4 indicate 7:15 indicated 7:7 inflicted 5:25 inherent 5:11 8:20 inherently 5:17 inmate 6:6 inmates 5:14 6:10,12,13,16 instance 7:10 instances 5:5 7:18 instructions 4:10 interest 6:14 interested 10:13 involved 8:15 issued 4:4 item 9:8 items 5:12,15,19	M MARK 3:10 MARKET 3:5 Master 1:6,21 4:6,16 9:10 Master's 4:6 Mastroianni 2:6 2:19 10:3,19 matter 1:4 2:6 Mejias 4:10 mentioned 7:19 multiple 8:15	O O 2:6 10:3,19 observe 6:24 occasion 5:5 occur 6:21 occurred 4:22 Officer 5:10,17 6:2 7:3 8:23 officers 5:3 6:9 7:4 8:5,12,15 once 6:20 7:1,20 8:18 opinion/report 1:5 4:4 9:9 order 4:5,16 9:14 outset 6:22	Q question 7:1 8:1 8:9,14 quotations 4:23	S S 3:2 Sally 5:4,16 6:18 8:15,22 satisfied 5:22 saw 7:6 says 5:25 search 4:19,25 7:4 see 8:7 separate 5:5 September 6:9 set 4:9 9:12 10:8 seven 4:15 shift 6:4 Shorthand 10:4 significant 7:16 slammed 4:24 SOG 5:13 South 2:21 Special 1:6,21 4:6,6,16 9:10
J JAMES 3:11 Jersey 1:2 2:8,10 2:22 3:6,13 10:5,20 JOHN 1:21 JUDGE 4:1 judgment 9:14 jury 4:9,10 JUSTIN 3:5	N N 3:2 neither 10:9,11 never 6:5,6 New 1:2 2:8,10 2:22 3:6,13 10:4,20 non-conforming	P P 3:2,2 page 6:8 7:11,23 pages 7:12,19 pain 5:7 paragraph 4:15 parties 10:11 PC 3:9 personnel 6:23 Pike 2:21 place 4:22 7:21 8:4,10 10:8 PLAINTIFFS 3:7 Plaza 2:9 PM 2:10 populations 6:15 Port 5:4,16 6:19 8:15,22	R R 3:2 10:1 read 7:23 really 7:22 reason 6:20 reasons 9:12 rebutted 5:18 recalcitrance 7:15 recommend 9:13 record 4:23 records 6:2 7:14 recounted 8:21 Reference 4:5 4:16 refutation 8:22 regard 1:4 5:12 5:24 9:2,15 relative 10:10,12	

November 12, 2009

13

SQUARE 3:13	type 7:18	10:21		
State 1:5 2:8	U	2009 1:15 10:21		
3:12 10:4,20	unarmed 6:15	2010 10:20		
States 1:1 2:9	underlie 4:8	25 8:11		
stenographica...	unit 5:2,9,16 7:2	251 2:21		
10:7	7:6 8:3,4,5	3		
STEVEN 3:12	United 1:1 2:9	3:44 2:10		
stop 8:6,8	untruths 5:18	30th 6:9		
STREET 3:5	V	30X100085700		
strip 4:25	Videoconfere...	2:7		
stubborn 7:13	2:20	33 3:12		
9:1	vs 1:8	330 3:5		
substantial 5:19	W	5		
summary 4:23	W 1:21	5 10:20		
supervisory 6:23	Walker 4:10	52.1 4:14		
supposedly 6:18	want 8:1	6		
7:21	wasn't 8:24	609-586-2257		
T	way 5:2,4	3:13		
T 3:5 10:1,1	West 5:4,15 6:18	7		
taken 2:6 10:7	8:22	74 7:12		
team 7:4	White 2:21	75 7:12		
tell 8:13	WILLIAM 1:9	8		
testified 6:2,7	written 4:15	856-546-1100		
7:3 8:11	X	2:23		
testimony 4:20	XIO857 10:21	856-968-9201		
7:17,18,23 8:5	0	3:6		
9:4 10:6	08-1291 1:2 4:3	9		
Theresa 2:6 10:3	08102 2:10 3:6	97 6:4 7:11		
10:19	08106 2:22	99 7:12,19		
things 6:1	08690 3:13			
three 5:2,15	1			
THURSDAY	1st 4:19 6:4			
1:15	103 7:19			
time 6:5,6 10:7	112 7:24			
toto 5:21	12 1:15			
trailer 4:17,19	133 6:8			
6:3 8:24	1337 3:12			
transcript 2:5	1997 4:19			
4:14 6:8 7:11	2			
10:6	20 7:25 8:11			
trip 5:1				
true 10:6				
truth 5:19 7:17				
trying 8:8				
two 5:1,5,12,19				